

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1037**

**Introduced by Assembly Member Frommer**

February 22, 2005

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An act to amend Section ~~24306~~ of the Revenue and Taxation Code, relating to taxation; ~~25120~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1037, as amended, Frommer. Corporation tax: ~~Golden State Scholarshare Trust~~ sales factor: registered securities and commodities brokers and dealers.

The Corporation Tax Law, in conformity with federal income tax laws, excludes from gross income any earnings under a qualified tuition program or savings account, and distributions from the program or account are includable in gross income only to the extent the distributions exceed the amounts contributed.

This bill would make a technical, nonsubstantive change to those provisions.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, including an extractive business

activity, business income is apportioned in accordance with a specified 3-factor formula.

*This bill would, for purposes of the sales factor, provide that notwithstanding the Multistate Tax Compact, gross receipts arising from a treasury function, as defined, means only the overall net gain, including interest and dividends, realized from transactions undertaken as part of a treasury function, as defined.*

*This bill would take effect immediately as a tax levy.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 24306 of the Revenue and Taxation~~

2 ~~Code is amended to read:~~

3 *SECTION 1. Section 25120 of the Revenue and Taxation*

4 *Code is amended to read:*

5 25120. As used in Sections 25120 to 25139, inclusive, which  
6 shall hereafter be referred to as “this act,” unless the context  
7 otherwise requires:

8 (a) “Business income” means income arising from transactions  
9 and activity in the regular course of the taxpayer’s trade or  
10 business and includes income from tangible and intangible  
11 property if the acquisition, management, and disposition of the  
12 property constitute integral parts of the taxpayer’s regular trade  
13 or business operations.

14 (b) “Commercial domicile” means the principal place from  
15 which the trade or business of the taxpayer is directed or  
16 managed.

17 (c) “Compensation” means wages, salaries, commissions and  
18 any other form of remuneration paid to employees for personal  
19 services.

20 (d) “Nonbusiness income” means all income other than  
21 business income.

22 (e) (1) “Sales” means all gross receipts of the taxpayer not  
23 allocated under Sections 25123 through 25127 of this code.

24 (2) (A) *Notwithstanding Section 38006, gross receipts arising*  
25 *from a treasury function shall be limited to the overall net gain,*  
26 *including interest and dividends, realized from transactions*  
27 *undertaken as part of a treasury function.*

1 (B) For purposes of this paragraph, all of the following apply:

2 (i) “Treasury function” means the pooling, management, and  
3 investment of liquid assets for the purpose of satisfying the cash  
4 flow needs of the trade or business, including, but not limited to,  
5 providing a reserve for business contingencies and business  
6 acquisitions.

7 (ii) “Liquid asset” means a readily marketable intangible,  
8 including, but not limited to, stocks, bonds, debentures, options  
9 warrants, futures contracts, foreign currency, and mutual funds  
10 that hold those intangibles. “Liquid asset” does not mean  
11 currency held in bank accounts if that is the currency that the  
12 business regularly used in the conduct of its trade or business,  
13 unless that currency is an instrument that may be purchased or  
14 sold for a gain or loss. An intangible is considered marketable if  
15 it is traded in an established stock or securities exchange or  
16 market and is regularly quoted by brokers or dealers.

17 (iii) An equity interest in a business entity, such as stock in a  
18 corporation, that is unitary with the taxpayer, or that has a  
19 substantial business relationship with the taxpayer, is not  
20 considered a marketable intangible.

21 (3) Notwithstanding Section 38006, in the case of a taxpayer  
22 that is a registered securities or commodities broker or dealer, as  
23 described in Section 25136.1, the amount of gross receipts from  
24 activities described in that section, whether within or without this  
25 state, shall be determined in accordance with Section 25136.1.

26 (f) “State” means any state of the United States, the District of  
27 Columbia, the Commonwealth of Puerto Rico, any territory or  
28 possession of the United States, and any foreign country or  
29 political subdivision thereof.

30 SEC. 2. This act provides for a tax levy within the meaning of  
31 Article IV of the Constitution and shall go into immediate effect.

32 ~~24306. (a) For purposes of this section, the following terms~~  
33 ~~have the following meanings, as provided in the Golden State~~  
34 ~~Scholarshare Trust Act (Article 19 (commencing with Section~~  
35 ~~69980) of Chapter 2 of Part 42 of the Education Code):~~

36 ~~(1) “Beneficiary” has the meaning set forth in subdivision (c)~~  
37 ~~of Section 69980 of the Education Code.~~

38 ~~(2) “Benefit” has the meaning set forth in subdivision (d) of~~  
39 ~~Section 69980 of the Education Code.~~

~~(3) “Participant” has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.~~

~~(4) “Participation agreement” has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.~~

~~(5) “Scholarshare trust” has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.~~

~~(b) Except as otherwise provided in subdivision (c), gross income of a participant shall not include any of the following:~~

~~(1) Any earnings under a Scholarshare trust, or a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.~~

~~(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.~~

~~(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner provided under Section 72 of the Internal Revenue Code, as modified by Section 24272.2, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:~~

~~(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.~~

~~(B) All distributions during a taxable year shall be treated as one distribution.~~

~~(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.~~

~~(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee’s minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.~~

~~(3) For purposes of this subdivision, “distribution” includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.~~

1     ~~(4) (A) Paragraph (1) shall not apply to that portion of any~~  
2     ~~distribution that, within 60 days of distribution, is transferred to~~  
3     ~~the credit of another beneficiary under the Scholarshare trust who~~  
4     ~~is a “member of the family,” as that term is used in Section~~  
5     ~~529(e)(2) of the Internal Revenue Code, as amended by Section~~  
6     ~~211 of the Taxpayer Relief Act of 1997 (Public Law 105-34), of~~  
7     ~~the former beneficiary of that Scholarshare trust.~~

8     ~~(B) Any change in the beneficiary of an interest in the~~  
9     ~~Scholarshare trust shall not be treated as a distribution for~~  
10    ~~purposes of paragraph (1) if the new beneficiary is a “member of~~  
11    ~~the family,” as that term is used in Section 2032A(e)(2) of the~~  
12    ~~Internal Revenue Code, of the former beneficiary of that~~  
13    ~~Scholarshare trust.~~

14    ~~(d) For taxable years beginning on or after January 1, 2002,~~  
15    ~~Sections 529(e) and 529(e) of the Internal Revenue Code, as~~  
16    ~~amended by Section 402 of the Economic Growth and Tax Relief~~  
17    ~~Reconciliation Act of 2001 (Public Law 107-16) and Section 417~~  
18    ~~of the Job Creation and Worker Assistance Act of 2002 (Public~~  
19    ~~Law 107-147), shall apply in lieu of subdivisions (b) and (c) of~~  
20    ~~this section.~~